

## UNION EXHIBIT 8

STATE OF OHIO )  
                    )  
COUNTY OF CUYAHOGA )

## AFFIDAVIT OF BIRCH BROWNING

NOW COMES, Birch Browning, first being duly sworn under oath and hereby states the following:

1. I am a Professor of Music at Cleveland State University and a member of the CSU-AAUP bargaining unit. I currently serve as one of the Grievance Officers for the CSU-AAUP and have served in that role since August 2018.
2. This affidavit is being provided in support of the CSU-AAUP's Position Statement in response to the Unfair Labor Practice Charge filed by Dr. Bryan Pesta, SERB Case No. 2022-ULP-04-0045.
3. Dr. Pesta never notified the CSU-AAUP of the investigation that had been conducted by the NIH, nor requested any representation in the investigation.
4. The Research Misconduct Policy and the role of the Investigation Committee is not referenced in the CBA. However, the Investigation Committee is required to provide extensive due process protections for the accused faculty member throughout the investigation. In addition, because the investigation is conducted pursuant to the University's Research Misconduct Policy, and not addressed in the CBA, the accused faculty member can be represented by the CSU-AAUP or by private counsel.
5. In his ULP Charge, Dr. Pesta referenced his August 23, 2021 email and added, in bold, that the Union never met with him. However, although Dr. Pesta suggested a meeting in his August 23, 2021 correspondence, there were many back-and-forth emails between him and the Union after that time, negating the need for a meeting. At that time, Dr. Pesta was represented by private counsel, the investigation that was being conducted was outside the parameters of the CBA, and there was no role for the CSU-AAUP to play.
6. The "just cause" language in the CBA does not apply until discipline is rendered.
7. Only after the Investigation Committee meeting on September 7, 2021 with Dr. Pesta was scheduled did Dr. Pesta inform the CSU-AAUP of the date. Dr. Pesta did not invite the CSU-AAUP representatives to attend the interview. He also did not share any of the underlying documents with them. However, his private attorney, Mr. Carson, had been copied on all the emails between Dr. Pesta and Dr. Ward and, as previously stated to the CSU-AAUP, Mr. Carson was going to represent Dr. Pesta during the interview.
8. In his ULP Charge, Dr. Pesta misrepresents the Article 8 ad hoc committee as a "management committee." Dr. Pesta also asks why the CSU-AAUP does not conduct its own investigation. However, the Article 8 ad hoc committee is not a "management committee" but is a committee made up of equal Union and management representatives. In addition, the CSU-AAUP does not have the authority to conduct a formal investigation similar to that being conducted by the Investigation Committee created under the University's Research Misconduct Policy.



there were any procedural violations which might be grievable and found none. Dr. Pesta was provided with every protection in the CBA.

18. Article 8 of the CBA includes a step in the discipline process under which the Provost must convene an ad hoc committee comprised of three bargaining unit faculty and three administrators with faculty rank to conduct a hearing on any proposed sanction. The intent of this step is to provide a step in which the faculty member can be heard, the allegations addressed, and a resolution proposed. It has been used successfully to avoid arbitration of discipline for many years. If the ad hoc committee is split in its findings, or if the Provost imposes disciplinary action which exceeds the recommendation of the ad hoc committee, then the CSU-AAUP will have a greater chance of prevailing in a subsequent arbitration. However, if the ad hoc committee's decision is unanimous and if the Provost's decision is consistent with the recommendation of the ad hoc committee, then the likelihood of success in a subsequent arbitration is low, absent procedural irregularities. That is what factored into the decision by the Executive Committee of the CSU-AAUP when they determined not to grieve and arbitrate Dr. Pesta's termination.

19. As one of the CSU-AAUP Grievance Officers, I am aware of a case involving a faculty member in the College of Science and Health Professionals. On April 28, 2021, the Provost recommended dismissal of the faculty member. An ad hoc committee was formed and a hearing held on May 21, 2021. In this case, the allegations involved student complaints about the faculty member's teaching, interactions with students, and unprofessional behavior in the classroom. These complaints include discrepancies between the course syllabus and methods to evaluate student performance, disrespect toward students, ridiculing students for performing poorly, impatience and dismissive behavior in response to student questions or concerns, and failure to accommodate student learning needs. After the hearing, the ad hoc committee's determination was as follows:

While the entire committee found [the faculty member's] conduct in class and in the lab unacceptable, there was not majority support for the Provost's recommendation for dismissal due to the lack of progressive discipline enacted by the Administration as articulated in the CSU-AAUP Collective Bargaining Agreement. Thus, the committee majority recommends that the sanction of unpaid leave from the University for the period of one year be imposed.

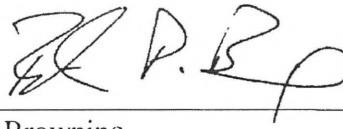
In this case, after the ad hoc committee issued its report, and before the Provost issued the sanction, the faculty member voluntarily resigned. As a result, the CSU-AAUP did not have to make a determination as to whether to grieve and arbitrate the sanction. However, if the Provost had issued a sanction as recommended by the ad hoc committee of a one-year suspension, that would have carried far greater weight than had the Provost issued a sanction of dismissal after the ad hoc committee rejected that sanction as too severe. In other words, the ad hoc committee structure worked in providing a

review by a joint labor/management committee after the Provost recommended discipline and before the sanction was issued. It also shows that the ad hoc committee structure does not “rubber stamp” recommendations by the Provost but acts as an independent body to evaluate behavior and proposed sanctions from that behavior.

20. As one of the CSU-AAUP Grievance Officers, I am aware of another case involving a faculty member in the College of Liberal Arts and Social Sciences. This case falls under the new language in Article 8 of the 2021-2022 CBA which limits the administration’s ability to remove a faculty member from their classroom responsibilities without going through the Article 8 process. In this case, the faculty member canceled numerous graduate classes in the fall 2021 semester without informing their chair or arranging for the classes to be covered by another faculty member as required by the CBA. During the spring semester, the faculty member continued to cancel classes without informing the department chair, arranging for course coverage, or applying for medical leave. This was accompanied by the faculty member refusing to discuss these issues with the college leadership. Because of the new language in Article 8, the Provost recommended a suspension with pay, and an ad hoc committee was created. The ad hoc committee unanimously recommended a suspension with pay through the end of the Spring 2022 semester in order to prevent irreparable academic harm to students. The Provost accepted this recommendation and has issued a suspension with pay through the end of the current semester.

21. As one of the CSU-AAUP Grievance Officers, I am aware of a third case involving a faculty member in the College of Liberal Arts and Social Sciences. In this case, there were numerous complaints about the faculty member’s treatment of student in their classes. The University’s Office of Institutional Equity (OIE) conducted an investigation of the faculty member’s treatment of students and particularly the treatment of students registered with the University’s Office of Disability Services. The OIE issued a report on December 21, 2021 which substantiated the claim of discrimination against students with disabilities and found that the faculty member created a hostile learning environment in the classroom. The Provost then recommended a suspension without pay for the remainder of the Spring 2022 semester and for the entire 2022-2023 academic year. An Article 8 ad hoc committee was created and a hearing held. The ad hoc committee disagreed with the Provost’s recommendation and found that the suspension was not warranted. After receiving the ad hoc committee’s recommendation, the Provost retracted the recommended suspension and, instead, issued a written warning.

Affiant further sayeth naught.



Birch Browning

Sworn to and subscribed to before me, a Notary Public, on this 24th day of May, 2022.

Notary Public

SUSANNAH MUSKOVITZ, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date,  
Section 147.03 B.C.